IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2927 OF 2006
[FOR LEAVE TO APPEAL]
IN
CRIMINAL APPEAL NO. OF 2006

Pimpri-Chinchwad Municipal
Corporation, through
Shri.Dilip Anant Karanjkhele. ..Applicant.
Versus
1. Shri Raju Ramu Sathe, &
2. State of Maharashtra. ..Respondents.

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Mr.Deepak R. More, Adv. for the Applicant.
Ms.P.H.Kantharia, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 04, 2007.

P.C.:

1. The applicant-orig.complainant has filed this application for leave to appeal against the judgment and order of acquittal dated 4.5.2006 passed by the learned JMFC, PCMC Court, Akurdi, Pune in R.C.C. No.6/2004. By the said judgment and order, the learned Magistrate acquitted respondent No.1-orig.accused of the offence punishable under Section 7(1) r/w. Section 2(ia) (a), 2(ia) (h), 2(ia) (1) and Section 7(v) r/w. Rule 47 & Rule 50 punishable under Section 16 of the Prevention of Food Adulteration Act, 1954.

2. Heard the learned Advocate for the applicant-orig.complainant and the learned APP for the State. None appears for respondent No.1, though served.

3. The prosecution case is that the sample of Toddy was taken from the shop of respondent-accused. The said shop was conducted by the respondent and it was situated at S.No.32, Pimple Gaurav, Navecha Rasta, Pune-27. Thereafter the sample was sent to Public Analyst for analysis. As per the P.A. report the sample of Toddy was found to be adulterated. From the record, it is seen that there is no evidence to show that the containers in which the sample was taken were clean. There is a clear violation of Rule 14 of the Act. Obviously, if the containers are not clean, the P.A. report would be adverse. Moreover, it is seen that the containers in which the samples were taken were not properly wrapped and sealed. During the examination-in-chief, PW-1 has not stated that the paper slip signed by the LHA was pasted on the each part of sample. The complaint Exh.1 and the panchnama Exh.17 are also

silent about the said fact. Thus, there is breach of Rule 16 of the Act.

. Shri.Vinayak Kulkarni who is a public servant and who is working in the State Excise Department has been examined as a witness. Shri.Vinayak Kulkarni has admitted in his evidence that, on address on S.No.32, Pimple Gaurao, the person Raju Ramu Sathe (i.e. present respondent) was not conducting Toddy business and during his visit, he never found the accused Raju Sathe in the said shop as a vendor and there were no complaints about the said business. Not only this, during his cross-examination Shri.Kulkarni has agreed that, there was no Toddy shop at S.No.32, Pimple Gaurav after August, 2003. This witness has specifically denied that, on 29.9.2003, Raju Sathe was running Toddy shop at S.No.32, Pimple Gaurav.

4. Looking to the fact that the containers were not clean, the respondent-accused would be entitled to the benefit of doubt. The learned Magistrate has taken all these aspects into consideration and has thereafter acquitted the

respondent.

5. Looking to the record, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

6. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view, hence, no interference is called for. Application for leave to appeal is rejected.

Consequently, Appeal also stands dismissed.

(SMT.V.K.TAHILRAMANI,J.)